

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JESUS APARICIO and ELIZABETH
APARICIO,

Plaintiffs,

v.

WELLS FARGO BANK, NA and
eTITLE,

Defendants.

Case No. 2:11-cv-646-TS-SA

REPORT AND RECOMMENDATION

Magistrate Judge Samuel Alba

Pro se plaintiffs Jesus Aparicio and Elizabeth Aparicio filed this action in Utah State Court. Defendant Wells Fargo Bank, N.A. ("Wells Fargo") removed the action to this court on July 11, 2011. (Doc. 2.) The case was then referred to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) on July 15, 2011. (Doc. 5.) Also that day, Defendant eTitle Insurance Company ("eTitle") filed a motion to dismiss. (Doc. 7.) Defendant Wells Fargo filed a motion to dismiss on August 1, 2011. (Doc. 11.)

On September 27, 2011, the court held a hearing to address the two motions to dismiss. Counsel for each defendant appeared; however, Plaintiffs failed to appear. Plaintiffs were mailed the notice of hearing on August 12, 2011 (Doc. 21), but they did not

call or otherwise inform the court that they did not plan to attend the hearing.

That same day, following the hearing, the court issued an order to show cause. (Doc. 28.) The order instructed Plaintiffs to appear at a show cause hearing on October 18, 2011. The order informed Plaintiffs that “[f]ailure to appear at the October 18th show cause hearing will result in the court’s recommendation that this case be dismissed.” (Doc. 28, at 2.)

On October 18, 2011, the court held the show cause hearing. (Doc. 29.) As before, counsel for each defendant appeared, but Plaintiffs failed to appear. (*Id.*) Further, Plaintiffs did not contact the court to explain their absence.

Because Plaintiffs failed to appear, without explanation, at the September 27 and October 18, 2011 hearings, despite being warned that failure to appear would result in a recommendation that the case be dismissed, the court recommends that this case be dismissed pursuant to Rule 41(b) for failure to appear at the September 27 and October 18, 2011 hearings, and for failure to prosecute. See Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).

RECOMMENDATION

Based on the above analysis, **IT IS RECOMMENDED** that this case be dismissed pursuant to Rule 41(b), as explained above.

Copies of the foregoing Report and Recommendation are being mailed to the parties who are hereby notified of their right to object to the same. The parties are further notified that they must file any objections to the Report and Recommendation, with the clerk of the district court, pursuant to 28 U.S.C. § 636(b), within fourteen (14) days after receiving it. Failure to file objections may constitute a waiver of those objections on subsequent appellate review.

DATED this 19th day of October, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Samuel Alba", is positioned above a horizontal line.

SAMUEL ALBA
United States Magistrate Judge